

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 2788 OF 1994.

Chandrayya Lingayya Upalwar, age 44 years, Occ: Business, R/o 161, Somwar Peth, Modikhana, Solapur.	]]]	.. Petitioner (Ori. Pltff.)
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Versus

Narayan Eknath Nawale, age 41 years, Occ: Service, residing at 161, Somwar Peth, Modikhana, Solapur.	]]]	.. Respondent (Ori. Defdt.)
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Mr. Jagdish Reddy i/b P.K. Dhakephalkar for the
petitioner.

None for the respondent.

CORAM: ANOOP V. MOHTA, J.

DATED: 22ND JULY, 2005.

ORAL JUDGMENT. :

1. The petitioner is landlord and respondent is tenant. The premises in question consist of one room admeasuring 9' X 10'. The monthly tenancy was @ Rs.25/-. On 27/8/1984, petitioner-landlord filed Regular Civil Suit No.653 of 1984 for possession of the suit premises on the ground of arrears of rent, as well as, bonafide need. The same was resisted by the respondent-tenant by Written Statement. The parties led

evidence. The Joint Civil Judge, Junior Division, Solapur (for short "Trial Court"), after considering the evidence and the material on the record, decreed the suit only on the ground of default. The grounds of bonafide need and comparative hardship were not considered at all. The other ground of acquisition of suitable alternative accommodation was also rejected. Respondent-tenant, therefore, preferred Appeal No.305 of 1990 before the Additional District Judge, Solapur (for short "Appellate Court"). Cross-objections were also filed. By the impugned judgment and order dated 25/11/1992, the Appellate Court allowed the Appeal and set aside the judgment and decree passed by the Trial Court. Therefore, the present Writ Petition by the petitioner-landlord.

2. Heard Mr. Jagdish Reddy, learned counsel appearing for the petitioner-landlord. None appeared for the respondent, though served. The petitioner-landlord's case of bonafide need has a foundation supported by the evidence, basically when the respondent-tenant himself in his evidence stated "One Hair cutting Saloon is running close to me. It belongs to the plaintiff. He was running the shop there on rent". "The entire suit house is admeasuring 20' X 20'. It is true to say that the plaintiff resides in one

room." Apart from the above admission of the respondent on the record, plaintiff's own evidence further supports his case of bonafide need that there were, in all, 8 members in his family including his wife and five children. His two daughters, at the relevant time, were aged 26 and 23 years respectively and his sons were aged 21 and 17 years. In view of the above facts and supporting material on the record, I am of the view that the petitioner-landlord has made out his genuine case of bonafide need of the premises in question. The Apex Court has observed in 2005 (2), Mah.L.J., 5 Adil Jamshed Frenchman deceased by LRs. Vs. Sardar Dastur School Trust & Ors. as follows:

"The bonafide requirement is in *prasenti* and must be manifested in actual need so as to convince the Court that it is not a mere fanciful or whimsical desire."

3. Both the Courts below have completely overlooked the foundation of the above facts read with the law on this aspect, basically the principle concerning the bonafide requirement of the landlord, as observed in the following authorities. 2005 (3), Mh.L.J., 196 Goverdhandas Mulchand Agrawal & Ors. Vs. Bherulal Uderam Bagade & Anr., 2001 (4), ALL MR, 61 Shankar Bhairoba Vadangekar (thru LRs.) Vs. Ganpati

Appa Gatare (thru LRs) and 2001 (4), ALL MR, 536 (S.C.)
S.R.Babu Vs. T.K. Vasudevan & Ors.. The material relevant observation of the Apex Court are:

"In our view once it is held that the landlord requires additional accommodation for his personal use he is entitled to utilize it to best suit his requirement. The condition in which the additional accommodation is to be used by the landlord cannot be dictated by the tenant. The first respondent may use it as it exists or he may use it after necessary repairs, additions or alterations to suit his requirements. The appellant has no say in such matters."

4. The reasoning as given by the Courts below, need to be interfered with on the ground of bonafide need, as observed in **Shankar Bhairoba** (supra), as follows:

"I have no hesitation in concluding that the approach adopted by the Courts below in nonsuiting the landlord and in holding that the landlord has failed to establish reasonable and bonafide requirement, is an error on the face of the record and it has resulted in serious miscarriage of justice."

5. The issue of comparative hardship, in the present case, goes in favour of the landlord in view of the above observations in **Goverdhandas** (supra). In view of this, the petitioner is not pressing any other

grounds.

6. The learned counsel appearing for the petitioner is rightly not pressing the other issue relating to change of user or nuisance or default as both the Courts have, after considering the material on the record concurred and held against the petitioner-landlord. However, once the landlord is able to establish his case on bonafide need, that is sufficient to grant the decree for possession as prayed.

7. Taking into considerations the above reasoning, the judgment and order dated 25/11/1992, passed by the Additional District Judge, Appellate Court, is quashed and set aside. Suit is decreed as prayed. The judgment and order passed by the Trial Court dated 11/6/1990 is restored.

8. In view of the above, Writ Petition is allowed. Rule is made absolute. No order as to costs.

[ANOOP V. MOHTA, J.]

[srpasha@hc]